



Patent Application  
Serial No. 09/510,400

### REMARKS

In the Office Action the Examiner rejected Claims 1-45 under 35 U.S.C. § 112, second paragraph for being indefinite. Specifically the Examiner considered the term “water-like” to be unclear and ambiguous. The Examiner was most helpful in suggesting an alternate term that would be acceptable. The Examiner’s suggestion has been accepted in the accompanying amendment.

The Examiner also rejected Claims 1-45 under 35 U.S.C. § 102(b) as having been anticipated by **Gandhi** (U.S. Patent No. 5,851,578). The Examiner pointed out that “**Gandhi** teaches a clear/translucent beverage containing a non-gelling water soluble fiber, which includes water, and other ingredients which can be in the form of a powder mix, a liquid concentrated or a ready-to drink bottle beverage.” The Examiner found that the **Gandhi** beverage overlapped the ranges of ingredients in Applicant’s invention. As for health benefits, the Examiner found that these were inherent in the **Gandhi** invention.

Applicant respectfully traverses the rejection under 35 U.S.C. § 102(b). Despite having some common ingredients the goals of the inventions and very nature of the compositions of the current invention are remarkably different from the compositions of **Gandhi**. That reference has the goal of providing a “physiologically-effective clear/translucent beverage containing non-gel forming soluble fibre and a soluble salt of calcium and other minerals along with

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pharmaceutically-active components with organoleptic properties similar to a regular beverage."(emphasis added). This translates to a beverage with calcium and minerals, fiber and possibly pharmaceutically active components. A basic notion here is to replace ordinary beverages ("mimic all the properties of a regular fruit or cola beverage" col. 3, lines 8-9; "This powder mix when diluted with 8 ounces of water give a clear drink with taste profile similar to marketed fruit beverages" col. 7, lines 17-19). "This invention specifically addresses different combinations of a liquid beverage of buffered calcium lactate and mineral salts along with food acidulants and soluble fiber combinations with formulation aids and their manufacturing methods." (col. 2, lines 57-63). It is clear that the composition of **Gandhi** is beverage that tastes like a fruit or cola beverage but contains calcium, additional minerals, acidulants and soluble fiber.

The intent of the present invention is to extend the benefits of drinking adequate water (hydration) by adding the benefits of soluble fiber. The composition of the present invention is, for all intents and purposes, water. It tastes like water, it looks like water (except for the special instances where color is introduced as an indication of grade thus making the fluid look like colored water), and it is consumed like water. That was the reason that Applicant used the term "water-like" rather than "beverage" (the term used by **Gandhi**). Applicant appreciates the Examiner's concerns over the term "water-like" and has, therefore, replaced it. Nevertheless, Applicant asks the Examiner to keep in mind the original intent and

nuances of that term. It is of considerable concern to the medical profession that most people drink inadequate quantities of pure water. By drinking sugar laden or mineral laden (**Gandhi**) beverages in place of water the goals of hydration are not met. Adding soluble fiber to water does not appreciably decrease the hydration benefits of the liquid. Adding sugars and/or minerals in appreciable quantities does compromise the hydrating abilities of the resulting beverage.

When one consumes water, one expects the liquid to taste like water—not like cola or fruit beverages. When one consumes water, one does not expect to receive a large concentration of dissolved salts—even if these are “good” salts such as calcium salts. When one consumes water, one does not expect the drink to be a significant source of calories. For these reasons the claims are limited to exclude these “non-water” beverages. For example, Claim 1 is specifically limited to compositions wherein less than 1 calorie per ml is metabolized and wherein the final composition contains less than 0.5 mg of a soluble salt per ml. Note that the limitation is 500 mg (0.5 g) per liter (l) which translates to about 15 mg per ounce whereas a typical **Gandhi** beverage (Example 2) contains over 600 mg per ounce based on the weight of the calcium carbonate, the lactic acid and the citric acid (which react with the calcium carbonate to produce soluble calcium salts). The point is that the present invention is intended to be a water-like composition and as such contains a negligible quantity of salts or “minerals”. Further, most of the illustrated formulae in **Gandhi** contain large quantities of sugar and greatly exceed the caloric

limitation of the claim. Because it is a goal of **Gandhi** to provide significant soluble calcium and other minerals, all **Gandhi** compositions tremendously exceed the 0.5 mg/ml limit of the claim.

The other independent claims of the present invention contain the above detailed caloric limitation as well as a limitation that excludes compositions providing a nutritionally significant amount of minerals or organic acids. This completely eliminates the **Gandhi** invention since it is the stated goal of that invention to provide minerals, especially calcium, in a significant amounts. The calcium is maintained as a soluble ion by adding copious quantities of organic acids. The addition of such acids is completely foreign to the "water-like" nature of the present invention. However, Applicant recognizes that the open nature of the original claims did not preclude such acids. Organic acids are now positively excluded.

The goal of the compositions of the present invention is to hydrate and at the same time provide a significant quantity of soluble fiber to realize the significant benefits of fiber detailed in the specification. The specification explains several scenarios for obtaining adequate fiber with the "eight, 8 oz. glasses of water" generally recommended. With the calcium rich compositions of **Gandhi** there appears to be the danger of obtaining too much calcium when consuming sufficient beverage to satisfy one's fiber requirement. Unfortunately, it is often not obvious

that one has exceeded one's calcium requirements until bursitis, kidney stones, or some other symptom of excess calcium consumption appears.

The goals and compositions of the instant invention are distinct from those of **Gandhi**. None of the claims or formulae of that invention read on the present invention nor do the claims of the present invention read on the compositions of **Gandhi**. For these reasons Applicant respectfully requests the Examiner to withdraw the claim rejections under 35 U.S.C. § 102(b) based on **Gandhi**.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested. If for any reason the Examiner still finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 337-6700 to discuss the steps necessary for placing the application in condition for allowance. You are hereby authorized to charge any fees due and refund any surplus fees to our Deposit Account No. 50-1314.

Respectfully submitted,

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## Marked up Claim Copy (Revised Rule 121)

1           1. (Twice Amended) A [water-like fluid] water composition for  
2   consumption by humans and animals comprising:  
3           between 0.1% and 10% by weight water-soluble indigestible fiber; and  
4           safe water, wherein fewer than 10 calories per 100 ml is metabolized by a  
5           human when consuming the [water-like fluid] water composition  
6           and wherein the [water-like fluid] water composition contains less  
7           than 500 mg./l of soluble salts and essentially no organic acids.

1           2. (Once Amended)      The [water-like fluid] water composition of  
2   Claim 1 further comprising a soluble food grade color.

1           3. (Once Amended)      The [water-like fluid] water composition of  
2   Claim 2, wherein the soluble food grade color acts as an indicator of an amount of the  
3   water soluble indigestible fiber contained in the [water-like fluid] water composition.

1                  4. (Once Amended)      The [water-like fluid] water composition  
2      Claim 1, wherein the water soluble indigestible fiber is selected from the group consisting  
3      of plant mucilage, plant gums, dextrans, maltodextrins, galactomannans,  
4      arabanogalactans, beta glucans, cellulose ethers, pectins, pectic material, water-soluble  
5      hemicellulose, inulin, alginates, agar, carrageenan, psyllium, guar gum, gum traganth,  
6      gum karya, gum ghatti, gum acacia, gum arabic, partially hydrolyzed products thereof  
7      and mixtures thereof.

1                  5. (Twice Amended)      The [water-like fluid] water composition  
2      Claim 1, wherein the water-soluble indigestible fiber and water form an optically clear  
3      solution.

1                  6. (Twice Amended)      A [water-like fluid] water composition for  
2      consumption by humans and animals comprising:  
3                  between 0.1% and 10% by weight water-soluble indigestible fiber selected  
4                  from the group consisting of dextrans, maltodextrins,  
5                  galactomannans, cellulose ethers, inulin, alginates, agar,  
6                  carrageenan, psyllium, guar gum, gum traganth, gum karya, gum  
7                  ghatti, gum acacia, gum arabic, partially hydrolyzed products  
8                  thereof and mixtures thereof; and  
9                  safe water, wherein the [naturally occurring] water and the water-soluble  
10         indigestible fiber form an optically clear solution, wherein fewer

11 than 10 calories per 100 ml are metabolized by a human when  
12 consuming the [water-like fluid] water composition and wherein  
13 the water composition contains a nutritionally insignificant amount  
14 of soluble minerals and essentially no organic acids.

1 7. (Once Amended) The [water-like fluid] water composition of  
2 Claim 6 further comprising a soluble food grade color.

1 8. (Once Amended) The [water-like fluid] water composition  
2 Claim 7, wherein the soluble food grade color acts as an indicator of an amount of the  
3 water soluble indigestible fiber contained in the [water-like fluid] water composition.

1                   9. (Twice Amended) A [water-like fluid] water composition  
2 [comprising] for consumption by humans and animals comprising:  
3                   between 0.1% and 10% by weight water soluble indigestible fiber selected  
4                   from the group consisting of dextrans, maltodextrins, inulin, guar  
5                   gum, partially hydrolyzed products thereof and mixtures thereof;  
6                   and  
7                   safe water, wherein the [naturally occurring] water and the water soluble  
8                   indigestible fiber form an optically clear solution, wherein fewer  
9                   than 10 calories per 100 ml are metabolized by a human when  
10                  consuming the [water-like fluid] water composition and wherein  
11                  the water composition contains a nutritionally insignificant amount  
12                  of soluble minerals and essentially no organic acids.

1                   10. (Once Amended) The [water-like fluid] water composition  
2                  Claim 9 further comprising a soluble food grade color.

1                   11. (Once Amended) The [water-like fluid] water composition of  
2                  Claim 10, wherein the soluble food grade color acts as an indicator of an amount of the  
3                  water soluble indigestible fiber contained in the [water-like fluid] water composition.

1                   12. (Once Amended)     The [water-like fluid] water composition of  
2     Claim 1, wherein said water-soluble fiber is selected to satisfy simultaneously both  
3     hydration requirements and fiber requirements when consumed.

1                   13. (Once Amended)     The [water-like fluid] water composition of  
2     Claim 1, wherein addition of said water-soluble fiber does not alter clarity of the water  
3     composition.

1                   14. (Once Amended)     The [water-like fluid] water composition  
2     Claim 1 formulated for managing constipation.

1                   15. (Once Amended)     A method of managing bowel regularity  
2     comprising the step of ingesting a quantity of the [water-like fluid] water composition of  
3     Claim 1.

1                   16. (Once Amended)     A method of managing hemorrhoids  
2     comprising the step of ingesting a quantity of the [water-like fluid] water composition of  
3     Claim 1.

1                   17 (Once Amended)     A method of avoiding assimilation of toxic  
2     bowel compounds comprising the step of ingesting a quantity of the [water-like fluid]  
3     water composition of Claim 1.

1           18. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 1 formulated for management of diabetes.

1           19. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 1 formulated for management of obesity.

1           20. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 1 formulated for appetite [supression] suppression.

1           21. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 1 formulated for lowering serum cholesterol levels.

1           22. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 2, wherein the soluble food grade color acts as an indicator of a type of the water-  
3   soluble indigestible fiber contained in the [water-like fluid] water composition.

1           23. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 6, wherein the water-like fluid contains fewer than 500 mg./l of soluble salts.

1           24. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 6, wherein said water-soluble fiber is selected to satisfy both hydration  
3   requirements and fiber requirements when consumed.

1           25. (Once Amended)     The [water-like fluid] water composition of  
2     Claim 6, wherein addition of said water-soluble fiber does not alter clarity of the water  
3     composition.

1           26. (Once Amended)     The [water-like fluid] water composition of  
2     Claim 6 formulated for managing constipation.

1           27. (Once Amended)     A method of managing bowel regularity  
2     comprising the step of ingesting a quantity of the [water-like fluid] water composition of  
3     Claim 6.

1           28. (Once Amended)     A method of managing hemorrhoids  
2     comprising the step of ingesting a quantity of the [water-like fluid] water composition of  
3     Claim 6.

1           29. (Once Amended)     A method of avoiding assimilation of toxic  
2     bowel compounds comprising the step of ingesting a quantity of the [water-like fluid]  
3     water composition of Claim 6.

1           30. (Once Amended)     The [water-like fluid] water composition of  
2     Claim 6 formulated for management of diabetes.

1           31. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 6 formulated for appetite [supression] suppression.

1           32. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 6 formulated for management of obesity.

1           33. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 6 formulated for lowering serum cholesterol levels.

1           34. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 10, wherein the soluble food grade color acts as an indicator of a type of the water-  
3   soluble indigestible fiber contained in the [water-like fluid] water composition.

1           35. (Once Amended)     A [water-like fluid] water composition for  
2   consumption by humans and animals comprising:  
3               between 0.1% and 10% by weight water-soluble indigestible fiber; and  
4               safe water, wherein fewer than 10 calories per 100 ml is metabolized by a  
5               human when consuming the [water-like fluid] water composition  
6               and wherein the water composition contains a nutritionally  
7               insignificant amount of soluble minerals and essentially no organic  
8               acids.

1           36. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35, wherein said water-soluble fiber is selected to satisfy simultaneously both  
3   hydration requirements and fiber requirements when consumed.

1           37. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35, wherein addition of said water-soluble fiber does not alter clarity of the water  
3   composition.

1           38. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35 formulated for management of constipation.

1           39. (Once Amended)     A method of managing bowel regularity  
2   comprising the step of ingesting a quantity of the [water-like fluid] water composition of  
3   Claim 35.

1           40. (Once Amended)     A method of managing hemorrhoids  
2   comprising the step of ingesting a quantity of the [water-like fluid] water composition of  
3   Claim 35.

1           41. (Once Amended)     A method of avoiding assimilation of toxic  
2   bowel compounds comprising the step of ingesting a quantity of the [water-like fluid]  
3   water composition of Claim 35.

1           42. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35 formulated for management of diabetes.

1           43. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35 formulated for management of obesity.

1           44. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35 formulated for appetite [supression] suppression.

1           45. (Once Amended)     The [water-like fluid] water composition of  
2   Claim 35 formulated for lowering serum cholesterol levels.